IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6538 of 1998
with
SPECIAL CIVIL APPLICATION No 3255 of 1998
with
SPECIAL CIVIL APPLICATION No 3373 of 1996
with
SPECIAL CIVIL APPLICATION No 3374 of 1996
with
SPECIAL CIVIL APPLICATION No 3375 of 1996
with
SPECIAL CIVIL APPLICATION No 3376 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BARODA MUNICIPAL CORPORATION
Versus
VADODARA MUNICIPAL CORPN EMPLOYEES UNION

Appearance:
1. Special Civil Application No. 6538 of 1998
MR PRANAV G DESAI for Petitioner No. 1 [BMC]
MR RD RAWAL for Respondent No. 1 [Workman]
and above numbered matters

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 12/08/2004

ORAL JUDGEMENT

Heard learned advocate Mr.P.G.Desai appearing on behalf of the petitioner Corporation and learned advocate Mr.R.D.Rawal for respondent workmen.

2. By way of filing two petitions, the Vadodara Municipal Corporation has challenged the award passed by the Industrial Tribunal, Baroda in Reference [IT] No.498 / 1984 and Complaint [IT] No.20 of 1995 dated 1st August, 1995. It has come on record that the very award in question has been reviewed by the Industrial Tribunal, Baroda by order dated 10th July, 1997. The Tribunal has also rejected review application filed by Corporation on 29.12.1997. That orders under review are also challenged by the Baroda Municipal Corporation. Whereas, the respondent workmen have filed four petitions of this group against non compliance of the award and order passed by the Industrial Tribunal, Baroda and defective compliance of the award in question by Corporation. Both the parties have filed their Affidavit-in-reply against respective petitions.

3. As reveals from the record, the workmen viz. Smt.Sumitriben Parekh, [2] Shri Jayesh Sureshchandra Vaidh and Smt.Sufiyaben Hasanbhai were working with the Corporation. Their services were terminated during pendency of Reference [IT] No.498 of 1994. The Reference No.498 of 1994 was in respect of the demand for the Library Attendant in the scale of Rs.260-350 and other benefits such as, earned leave, sick leave and casual leave and other two demands. Before the Tribunal, Statement of Claim was filed by the Union and Written Statement was submitted by the Corporation. Thereafter, one witness Bhupendrabhai Muljibhai Gandhi was examined at Exh.13. Other witnesses were also examined viz. Jayeshbhai Sureshchandra Vaidh at Exh.18, and Sumitriben Hitendrakumar at Exh.24 and Sufiyaben Hasnabhai at Exh.25. The Corporation has produced certain documents vide Exh.20 to 23 and the respondent workmen produced documents at Exh.21, 22 and 26. As such, no oral evidence led before the Tribunal by the Corporation. The Tribunal has examined both the questions together. The first question was as regards termination of services of three concerned workmen, and accordingly, whether termination of service of concerned workmen was legal and valid or not. The second question was; whether Library

Attendant is entitled to scale of Rs.260-350. Both these disputes and issues were examined simultaneously in the award and ultimately, the Tribunal has come to the conclusion that termination was bad, illegal and violative of Section 25-F of the Industrial Disputes Act, 1947 and therefore, all three workmen are entitled to reinstatement with continuity of service. In respect of the backwages part, the Tribunal has come to the conclusion that at the time of terminating service, other three workmen viz. Bhupendrabhai, Salamaben and Jyotsnaben had remained in service and continued in employment and therefore, whatever scale and monetary benefit paid to these workmen, are being entitled by these concerned workmen from the Corporation. This aspect has been discussed in para-16 and 17. Ultimately, the tribunal has come to the conclusion that workmen are entitled to scale of Rs.260-350 which revised in scale of Rs.950-1500 or whatever available revised grade from the date on which they entitled. Accordingly, final award came to be passed granting backwages with effect from 1st January, 1994, as such, no arrears has been directed to be paid to the concerned workmen. Against this award, the concerned workmen filed review application being Misc. Application No.14 of 1996 wherein the tribunal has decided the application and rectified the mistake while exercising the powers under Rule 31 of the Industrial Disputes [Gujarat] Rules, 1966 holding that the workmen are entitled to salary in the scale of Rs.950-1500. The Corporation had also filed Review Application No.9/97 challenging the order in Review Application No.14/96 dated 10.7.97, which came to be rejected by the Tribunal vide order dated 29.12.1997. It is very order challenged by the Corporation by two petitions, whereas, as against non compliance and defective compliance of the orders, the workmen concerned preferred rest of the petitions of this group.

4. Mr.R.D.Rawal, learned advocate for the workmen submitted that the award in question has been fully complied with by the Corporation by order dated 14th March, 1996 which is produced on record at Annexure-C of Special Civil Application No.3373 of 1996. However, the dispute arose only on the issue that "which scale is entitled by the concerned workmen ?" According to the Corporation, out of three workmen, viz. Bhupendrabhai, Salmaben and Jyotsnaben whose reference is made in the award, said Bhupendrabhai and Jyotsnaben are getting salary in the scale of Rs.750-950 but said Salamaben was drawing the scale of Rs.950-1500. Therefore, learned advocate Mr.P.G.Desai has submitted that while

implementing the award in the question passed by the Tribunal, complication and confusion arose only on account of the order made on review application. He, however, submitted that in direction issued by the Tribunal, as such, no grade has been specified and it is not made clear as to which grade the workmen are entitled. On the other hand, Mr.Rawal for the respondent workmen has pointed out from para-17 of the impugned award and submits that the Tribunal has fixed the scale of Rs.260-350 revised to Rs.950-1500 and therefore, contended that the workmen concerned are entitled to revised scale of Rs.950-1500.

5. I have considered submissions made by the learned advocates for the parties and perused the award and orders. This Court has also considered the complication and confusion arose in the subject matter. As it emerged from the record, there is no doubt that termination order has been set aside by the Tribunal and also granted benefit of continuity of service in favour of these three concerned workmen as per the direction contained in operating portion of the order dated 1st August, 1995. The Tribunal has in terms granted reinstatement of these concerned three workmen viz. [1] Jayeshbhai [2] Sumitriben and [3] Sufiyaben in the scale and grade in which the other three workmen viz. Jyotsnaben, Sarlaben and Salmaben were granted, on the basis of their respective educational qualification and also further directed to fix their seniority and pay accordingly. Therefore, in my opinion, the award in question dated 1st August, 1995 is very clear and as such, there is no ambiguity.

6. However, Mr.Rawal has placed reliance on observations made in para-17 to contend that the Tribunal has decided to award the Grade of Rs.260-350 revised at Rs.950-1500. But in my opinion, on careful consideration of the same, the contention raised by Mr.Rawal is not correct as emerged from the record inasmuch as the next word has not been properly understood and interpreted by the learned advocate Mr.Rawal. The wordings of direction is very much clear to the effect that the workmen are entitled to the Grade of Rs.260-350 and new Grade of Rs.950-1500 or whichever available grade from the date of reinstatement as per their respective qualification. Therefore, for determination of issue that which grade each concerned workmen is entitled, "respective qualification is an important essence and criteria" and the same cannot be ignored by either side.

7. Therefore, considering the entire matter, the award passed by the Industrial Tribunal dated 1st August, 1995 is required to be implemented by the Corporation while reinstating all three concerned workmen in service with benefit of continuity of service in the scale / grade which is available to each workman according to their respective qualification as specified and made clear by the Tribunal. Therefore, considering the qualification of each workman, whichever revised grade is available against Grade of Rs.260-350 shall have to be extended to the concerned workmen by the Corporation. Therefore, according to my opinion, the Corporation shall fix the scale which is available to each workman on the basis of their qualification respectively as per Rules and Regulations of the Corporation. The rest of the directions as regards non granting of arrears and other direction, would stand unaltered and this Cout is not inclined to disturb the same on any count.

8. In view of above observations, clarification and direction, the award passed by the Industrial Tribunal concerned impugned in this group of petitions, is hereby confirmed. But the order passed thereafter on Review Application No.14 / 1996 dated 10.7.97 is modified to the extent as per observations in para-7 above. It is needlessly observed that all three concerned workmen have been reinstated pursuant to the Office Order dated 14.3.1996 referred to above.

All these petitions of this group, stand disposed of accordingly. Rule stands discharged. No order as to costs.

Date : 12.8.2004 [H.K.Rathod, J.]

#kailash, ps#